

New Federal Regulations on Home & Community Based Services (HCBS) to be effective 3/17/2014

In early January, the Centers for Medicare & Medicaid Services announced it had finalized important rules that affect home and community-based services (HCBS) provided through Medi-Cal, and subsequently published the regulations in the Federal Register on January 16, 2014. The rules are effective 60 days from publication, or March 17th.

The new rules are:

- CMS 2249-F – 1915(i) State Plan Home and Community-Based Services and Setting Requirements for 1915(k) Community First Choice
- CMS 2296-F – 1915(c) Home and Community-Based Services Waivers

This handout focuses on the requirements that affect California's programs under sections 1915(i) State Plan (CDDS) and 1915(k) State Plan (CDSS), and section 1915(c) waiver authorities (CDDS, CDPH, CDA, and DHCS), and any waivers being developed such as one for individuals with traumatic brain injury. The final rules:

- Give states the option to combine coverage for multiple target populations in one waiver under 1915(c) to facilitate use of waiver design that focuses on individuals' functional needs.

Prior to the final rules, states had to limit waiver services to a group of individuals, e.g. elders and/or persons with disabilities; persons with intellectual or developmental disabilities; or persons with mental illness.

- Define HCB settings as more outcome-oriented by:
 1. Being integrated in and supports full access to the greater community
 2. Giving individuals the right to select from among various setting options
 3. Ensuring individuals' rights of privacy, dignity and respect, and freedom from coercion and restraint
 4. Optimizing autonomy and independence in making life choices
 5. Facilitating choice regarding services and who provides them

For Provider-owned or controlled HCB settings, the Provider must offer:

- A legally enforceable agreement between the Provider and the consumer.

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- Privacy in units including lockable doors, choice of roommates and freedom to furnish and decorate units
- Options for individuals to control their own schedules including access to food at any time
- Individuals the freedom to have visitors at any time
- Physically accessible setting

Prior to the final rule, HCB setting requirements were based on location, geography, or physical characteristics.

- Define person-centered planning requirements across section 1915(c) and 1915(i) HCBS authorities that address health and long-term services and support needs that reflect individual preferences and goals. The planning process and resulting Individual Service Plan will then assist an individual to achieve personally-defined outcomes in the most integrated community setting, ensure delivery of services in a manner that reflects personal preferences and choices, and contribute to the assurance of health and welfare.
- Clarify timing of amendments and public input requirements when states modify programs and service rates under sections 1915(i) and 1915(k) State Plan, and section 1915(c) waiver authorities.

A transition plan (ensuring compliance with the final rules) for all waiver renewals, waiver amendments and State Plan amendments will be required by March 16, 2015; or within 120 days of first submission of waiver renewal, waiver amendment, or State Plan amendment after March 17, 2014. All waiver renewals, waiver amendments, and State Plan amendments submitted on or after March 17, 2014, must include a transition plan and must receive stakeholder input.

Prior to final rule, CMS would approve waiver renewals, waiver amendments, and State Plan amendments with a retroactive start date; now these must take effect on or after the date of CMS approval.

- Provide CMS the leverage to ensure states comply with section 1915(c), including waiver termination, moratorium on waiver enrollments, Federal financial participation withholds, and other actions determined by the Secretary of Health and Human Services.